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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/726,109

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Keijun Kishi

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4803

7590

10/19/2005

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EXAMINER

FLORES RUIZ, DELMA R

ART UNIT

PAPER NUMBER

2828

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

**Office Action Summary**

Application No.

10/726,109

Applicant(s)

KISHI ET AL.

Examiner

Delma R. Flores Ruiz

Art Unit

2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-22 is/are allowed.
- 6) ☒ Claim(s) 1-6, 9, and 23 - 26 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/04/04, 03/31/05; 5/18/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 03/04/2004, 03/31/2005 and 05/18/2005 have been considered by the examiner.

### ***Claim Objections***

Claim 5 is objected to because of the following informalities: Claim 5 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation in generally horizontal direction at a select grade is not understandable. The intended direction is not well defined. Appropriate correction is required.

Claims 5, recites the limitation "pipe" line 2 in claims 5. There is insufficient antecedent basis for this limitation in the claim.

Claims 3, 4, and 6 recite the limitation "drive leveling device" first line in claims 3, 4 and 6. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

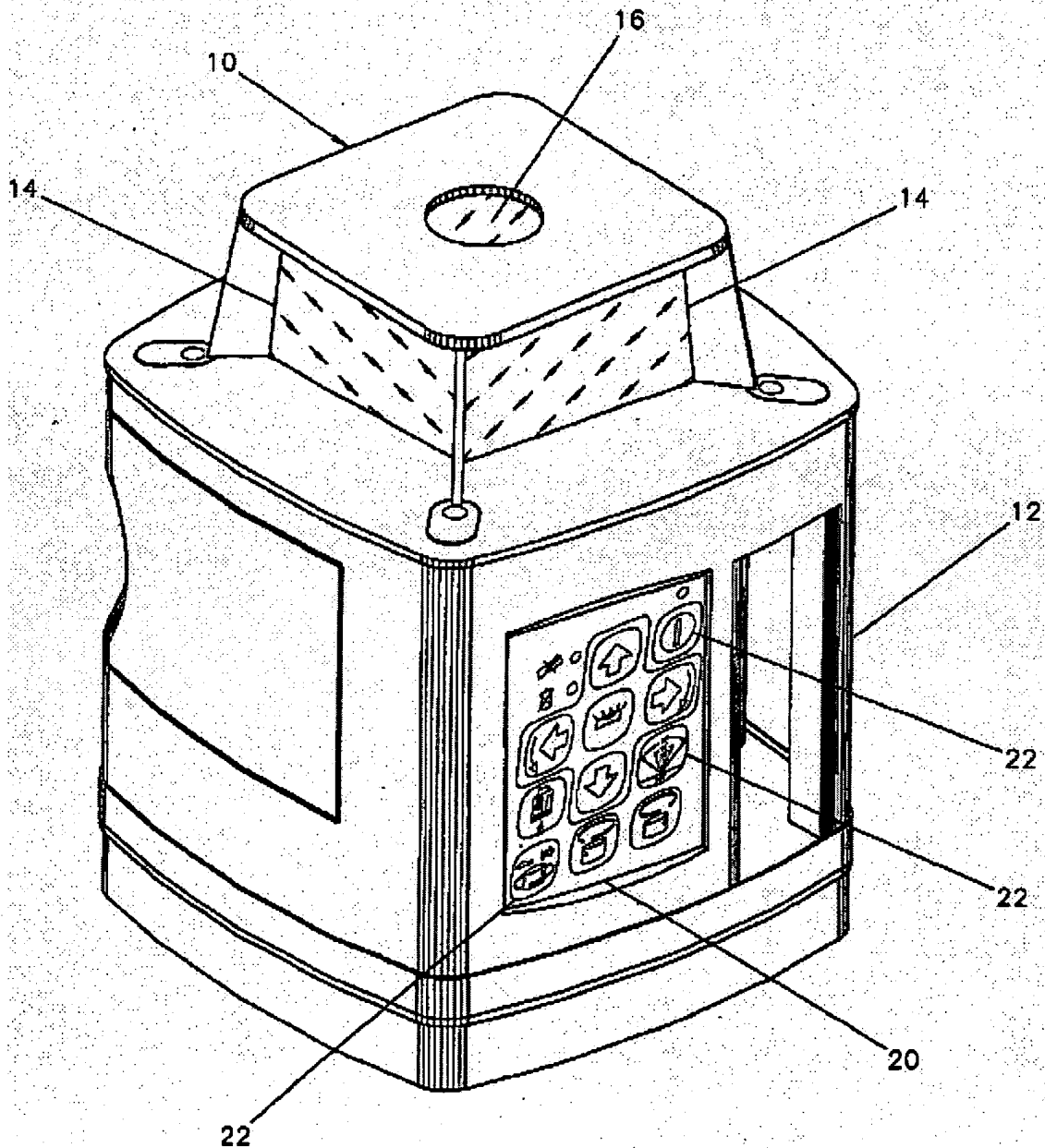
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 6, 9, 23 – 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Gerard et al. (5,689,330).

***Regarding claim 1***, Gerald discloses a laser transmitter comprising: a housing (see Fig. 1, Character 12) having a first laser exit window (see Fig. 1, Character 16) and a second laser exit window (see Fig. 1, Character 14); a laser source (see Fig. 1, Character 10) in said housing, configured to emit a reference beam of light; and a drive device (see Fig. 2, Character 18, the reference call “self-leveling mechanism”), operatively configured to orient said laser source such that said reference beam exits said housing through a select one of said first and second laser exit windows as a collimated laser output beam (Column 2, Lines 12 – 22).

***Regarding claim 2***, Gerald discloses first and second laser exit windows (see Fig. 1, Characters 14 and 16 ) on said housing are oriented in substantially orthogonal planes (Column 3, Lines 24 – 27).

Gerald discloses Figure 1



Windows = 14, and 16

Housing = 12

Keypad = 22

Laser plane generator = 10

Input device = 20

**Regarding claims 3 and 4**, Gerald discloses a drive leveling device can adjustably orient said reference beam across a range of at least 90 degrees, or at least 135 degrees (abstract).

**Regarding claim 5**, Gerald discloses a said first laser exit window (see Fig. 1, Character 16) is positioned on said housing so as to allow said pipe transmitter to be oriented in a generally horizontal position and direct said collimated beam in a generally horizontal direction at a select grade; and said second laser exit window (see Fig. 1, Character 14) is positioned on said housing so as to allow said pipe transmitter to be oriented in a generally vertical position and direct said collimated beam in said generally horizontal direction at said directed grade (see Fig. 1, Column 3, Lines 1 – 10).

**Regarding claim 6**, Gerald discloses a drive leveling (see Fig. 2, Character 18) device comprises a motor (see Fig. 2, Character 54) operative to incrementally adjust said laser source to a level position in response to a signal derived from a level sensor (Column 3, Lines 49 – 51).

**Regarding claim 9**, Gerald discloses a drive-leveling device is configured to fine tune level positioning in arcsecond level position resolution (Column 4, Lines 38 – 40)..

**Regarding claim 23**, Gerald discloses a laser transmitter comprising: a housing (see Fig. 1, Character 12) having a first laser exit window (see Fig. 1, Character 16) and a second laser exit window (see Fig. 1, Character 14); a laser source (see Fig. 1, Character 10) in said housing, configured to emit a reference beam of light; and a drive device (see Fig. 2, Character 18, the reference call "self-leveling mechanism"), operatively configured to orient said laser source such that said reference beam exits said housing through a select one of said first and second laser exit windows as a collimated laser output beam (Column 2, Lines 12 – 22); and a laser target configured to detect said collimated laser beam (Column 2, Lines 41 – 48, and Column 6, Lines 24 – 31).

**Regarding claim 24**, Gerald disclose a laser transmitter comprising: a housing (see Fig. 1, Character 12) having a first laser exit window (see Fig. 1, Character 16) and a second laser exit window (see Fig. 1, Character 14); a laser source (see Fig. 1, Character 10) in said housing, configured to emit a reference beam; a leveling device (see Fig. 2, Character 24) configured to indicate when said reference beam is oriented in a generally horizontal position (Column 1, Lines 30 – 39, Column 6, Lines 56 – 59 and claim 12); and a drive device (see Fig. 2, Character 18), operatively configured to orient said reference beam so as to exit said housing through a select one of said first and second laser exit windows as a collimated laser beam (Column 2, Lines 12 – 22),

said drive device arranged to orient said laser source in response to a signal from said leveling device (Column 2, Lines 11 – 35 and Column 3, Lines 23 – 41).

**Regarding claim 25**, Gerald disclose a laser transmitter comprising: a housing (see Fig. 1, Character 12) having a first laser exit window (see Fig. 1, Character 16) and a second laser exit window (see Fig. 1, Character 14); a laser source (see Fig. 1, Character 10) in said housing, configured to emit a reference beam; and a drive device (see Fig. 2, Character 18) operatively configured to orient said reference beam so as to exit said housing through a select one of said first and second laser exit windows as a collimated laser beam (Column 2, Lines 12 – 22) oriented generally horizontally during a setup mode of operation (Column 1, Lines 30 – 39, Column 6, Lines 56 – 59), wherein during said set up mode of operation, a level sensor provides feedback as to the level of said laser source with respect to the horizontal (see Fig. 2).

**Regarding claim 26**, Gerald discloses a output beam is programmable to a select grade and said output beam is oriented to said select grade after said set up mode of operation (abstract).



***Allowable Subject Matter***

Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: Claim 10 recites a laser assembly to a laser transmitter, structure including the specific structure limitation of first and second supporting members, a holder, laser source, *a level sensor operative to detect whether said laser source is in a level position or an out of level position with respect to a predefined plane; and a controller configured to selectively operate said drive device to pivot said laser source towards said level position with respect to said frame based upon information from said level sensor*, which is neither anticipated or disclosed nor suggested in any piece of available prior art, which is neither anticipated nor obvious over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delma R. Flores Ruiz whose telephone number is (571) 272-1940. The examiner can normally be reached on M - F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Min Sun Harvey can be reached on (571) -272-1835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Delma R. Flores Ruiz  
Examiner  
Art Unit 2828  
DRFR/MH  
October 14, 2005



Min Sun Harvey  
Supervisor Patent Examiner  
Art Unit 2828